

**IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA**

**THE STATE OF NEBRASKA,**  
Plaintiff,

vs.

**CAROLYN FULLER,**  
Defendant.

Case No. CR03-5

**JUDGMENT OF PROBATION**

**DATE OF SENTENCING:** April 7, 2003.

**APPEARANCES:**

For plaintiff: Thomas P. Herzog, Holt County Attorney.  
For defendant: Rodney W. Smith, Holt County Public Defender, with  
defendant.

**THIS CASE CAME ON FOR SENTENCING.** The Court finds that the defendant was adjudged guilty of the charge(s) of Theft by Unlawful Taking, a Class III felony, on January 27, 2003. Allocution had: defendant showed no sufficient reason why sentence should not be pronounced.

**IT IS THEREFORE ORDERED AND ADJUDGED** that the defendant is hereby sentenced to Probation for a period of five years from and after the commencement of probation under the supervision of a State Probation Officer. The term of probation shall be deemed to commence upon the first to occur of the following: (1) defendant's acceptance in writing of the conditions of probation, (2) the expiration of 30 days from the date of entry of this judgment if no appeal is taken, or, (3) the entry of judgment upon the mandate of the appellate court if appeal is timely perfected within 30 days after the date of entry of this judgment. As conditions of probation, the defendant shall:

1. Not violate any laws, and refrain from disorderly conduct or acts injurious to others.
2. Avoid social contact with those persons having criminal records or who are on probation or parole. Have no contact, directly or indirectly, with Nicole Miller or any member of Nicole Miller's immediate family.

3. Report to your probation officer in person as required by the probation officer, at such reasonable times and places to be fixed by the probation officer. If the defendant is arrested or cited for any violation of law, report such arrest or citation to the probation officer by the next working day.
4. Truthfully answer questions and allow the probation officer to visit you at all reasonable times and places. Generally cooperate with the reasonable requests of the probation officer for information. Show ordinary business courtesy toward the probation officer.
5. Obtain and maintain suitable full-time employment, or provide adequate proof to the probation officer that the probationer is diligently seeking such employment. However, such employment shall not include any managerial duties which would allow her access to the security of office or facility or unsupervised access to any monies of the business.
6. If required by the probation officer, such proof of search for employment shall include, at a minimum, registration with the Nebraska Job Service or its equivalent, and weekly reports in writing of at least two (2) bona fide personal contacts with prospective employers listing: (a) the name of the prospective employer, (b) the name of the person contacted; (c) the date and time of the contact; (d) the position for which employment was sought; (e) the job description of such position or a list of the skills required therefor; and, (f) such additional reasonable information as the probation officer may require from time to time.
7. Furnish the probation officer and the Clerk of the District Court for this county, in writing, with defendant's address (including specific street address or other physical location, in addition to mailing address), telephone number, and social security number, and the name, address, and telephone number of defendant's employer. The defendant shall also be required to advise the probation officer and the clerk in writing of any changes in such information between the time of entry of this judgment and release from probation, within ten (10) days after the effective date of such change.
8. Not leave the State of Nebraska without written permission of the court or the probation officer. The probation officer may approve transfer of administration of probation and change of probationer's residence to the State of Kentucky upon signature of all interstate compact forms, adherence to all compact rules and regulations, and acceptance of the State of Kentucky including agreement to fully implement these conditions of probation. If transferred, the county jail requirement shall be subject to service at the county jail of the county to which administration of probation is transferred.

9. Not have possession of any firearms, ammunition, or illegal weapons. Not be personally present with anyone who has possession of any firearms, ammunition, or illegal weapons.
10. Submit, from time to time, to any reasonable search and seizure of premises, person or vehicle, with or without probable cause, by or upon request of the probation officer or any law enforcement officer.
11. Obtain and follow expert advice and directions in continuing program of prescription medication for defendant's medical conditions.
12. Continue the existing program of mental health counseling and not discontinue counseling without the permission of the probation officer upon recommendation of the counselor or successor counselor.
13. Pay for the costs of any tests, evaluations, treatments, counseling, programs, classes, courses, meetings, or exercises required under the terms of this judgment or as required by the probation officer as a part of the administration of the terms of probation.
14. The defendant is sentenced to 180 days, less 29 days credit for time served before sentencing, in the Holt County Jail, to be served on consecutive days commencing on April 7, 2007, as follows:
  - A. Upon request of the probation officer, the court may advance the date for service of the jail sentence at any time without further hearing.
  - B. The jail sentence may be waived by the court upon the recommendation of the probation officer.
  - C. The sentence is subject to reduction under Neb. Rev. Stat. § 47-502. Assuming no good time for which defendant is eligible is lost, the defendant must serve 124 days, less 29 days credit for time served before sentencing, on the sentence before mandatory release.
  - D. Unless advanced or waived, commitment shall issue by the clerk on or before April 1, 2007, for execution of sentence by the sheriff, in form to be submitted by the county attorney. If advanced or waived, the clerk shall issue commitment as directed by such order. If advanced, the clerk shall mail a copy of the order advancing sentence to the defendant's last known address by regular mail.
  - E. Unless the sentence is waived, the defendant shall appear and surrender to the Holt County Sheriff at the time required by this judgment or by the order

advancing date of sentence. Failure to appear and surrender shall constitute a violation of probation, with such consequences as may be imposed by law, and may further result in a separate prosecution for the crime of Failure to Appear, with a separate and additional penalty, and may also result in the issuance of a bench warrant.

15. The defendant shall publicly apologize in writing to the owners and employees of the McDonald's Restaurant, the victim of the crime, by publishing a written apology in the Holt County Independent or other newspaper in general circulation in O'Neill, Nebraska approved by the probation officer, within 30 days after the commencement of probation. The advertisement shall be a display advertisement of at least eight column inches, and the content of the advertisement shall be approved in advance by the probation officer. The advertisement shall state that it is being published at the defendant's expense as a condition of probation by order of the District Court of the Eighth Judicial District. The defendant shall provide a written proof of publication to the probation officer within 10 days after publication.
16. The defendant shall pay to the clerk of the sentencing court, for disbursement to HH Hall Restaurant, Inc. of O'Neill, Nebraska d/b/a McDonald's, the victim of the crime, and/or its insurer, American Family Insurance, restitution in the amount of \$7,020.00, to be paid at the rate of \$30.00 per week, the first installment due on the second Monday following the commencement of probation and a like installment on Monday of each successive week thereafter until paid. The clerk shall disburse the first \$250.00 thereof to HH Hall Restaurant, Inc, and the remainder to American Family Insurance. The amount of restitution is limited by the defendant's ability to pay. There shall be no credit against the judgment for any amounts paid by Nicole Miller.
17. Pay to the clerk of the sentencing court the costs of prosecution taxed in the amount of \$\_\_\_\_\_, to be paid by December 31, 2003.
18. Pay to the clerk of the sentencing court, for disbursement to Holt County for partial reimbursement of the cost of defense counsel, the sum of \$350.00, to be paid by December 31, 2004.
19. In addition to any order of revocation, suspension, or limited driving imposed by law, the defendant's motor vehicle operator's license shall be impounded and the driving privileges of the defendant shall be limited as follows:
  - A. The defendant shall not operate a motor vehicle, except:
    - (1) to drive between the place of residence and employment by the most direct route,

- (2) during the course of employment for employment purposes only,
    - (3) to and from probation, medical, and counseling appointments by the most direct route, and,
    - (4) emergencies.
  - B. This period of impoundment shall be for a period of two (2) years from date of sentencing.
  - C. The probation officer may terminate this period of impoundment at any time, or may grant exceptions from time to time.
  - D. The defendant shall deliver her motor vehicle operator's license to the probation officer, who shall hold the same during the period of this limitation, and who shall provide the defendant with a photocopy thereof with these restrictions endorsed thereon.
  - E. This paragraph does not grant any driving privileges and does not affect any more restrictive order of revocation, suspension, or non-driving entered pursuant to law.
20. For a period of two years from the commencement of probation, the defendant shall maintain a curfew and shall not be present outside of the defendant's home and its curtilage between the hours of 11:00 PM and 5:00 AM, except for emergencies, work-related activities approved in advance in writing by the probation officer, or other special family, church, or community activities approved in advance in writing by the probation officer.

**IT IS FURTHER ORDERED AND ADJUDGED** that during the term of this probation, the Court, upon application of the probation officer or the defendant, or upon its own motion, may modify or eliminate any of the above conditions or add further conditions.

BY THE COURT:

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William B. Cassel, District Judge

I hereby accept probation and agree to abide by all the conditions of probation ordered by the court. Any violation of the above conditions is cause for revocation of my probation and may result in a sentence to confinement and/or other authorized punishment.

I do hereby waive extradition to the State of Nebraska if, at the time of my apprehension, I am in another state. If probation supervision is transferred to another state, I do hereby agree to abide by additional rules and regulations that may be imposed by the receiving state.

I received a copy of the above judgment on \_\_\_\_\_, 2003.

\_\_\_\_\_  
Defendant